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No. 91-532

In the Supreme Court of the United States

OCTOBER TERM, 1991

OSVALDO RODRIGUEZ-MORALES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing an order suppressing evidence that was seized from petitioner's car after the car was impounded and searched following a highway traffic stop.[1]

1. On June 12, 1990, petitioner was indicted by a grand jury sitting in the United States District Court for the District of Rhode Island. He was charged with one count of possession of cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1).

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[1] The court of appeals' judgment was entered on March 27, 1991, but the certiorari petition was not filed until July 1, 1991. It is therefore out of time under Rule 13.1 of the Rules of this Court.

Rhode Island State Police officers stopped petitioner's car because petitioner appeared to be engaged in an altercation with a person in another car while the two cars were traveling at high speed on an interstate highway. After stopping petitioner's car, the police discovered that petitioner did not have a valid driver's license. They therefore did not permit petitioner to continue driving the car, but instead took the car and petitioner to a nearby police barracks. There, a drug detecting dog alerted on the car, and a search of the car disclosed two kilograms of cocaine. Pet. App. 2a-4a.

Prior to trial, petitioner moved to suppress the cocaine that was found in the search of the car. On September 12, 1990, the district court granted the motion. The court found that the initial stop of petitioner's automobile was justified because the state police reasonably concluded that petitioner and the occupant of the other car were engaged in an altercation. The court nonetheless held that the cocaine should be suppressed because the officers had improperly arrested petitioner, without probable cause, when they took him and the car back to the police barracks. Pet. App. 5a.

The government appealed the suppression order pursuant to 18 U.S.C. 3731, and the court of appeals reversed. Pet. App. 1a-18a. The court first upheld the district court's finding that the police had reasonable cause to stop petitioner's car on the highway. *Id.* at 6a-7a. The court then concluded that the officers had acted reasonably in exercising their "community caretaking" function when they took the car to the police barracks after determining that petitioner lacked a valid driver's license. *Id.* at 7a-14a. The court explained that the officers' decision "not to leave an automobile on the shoulder of a busy inter-

state highway * * * can hardly be faulted; had the officers simply abandoned it, the Toyota not only would have posed a safety threat, but also would have been easy prey for vandals." *Id.* at 10a. Moreover, "[b]ecause impounding the car resulted from a legitimate use of the troopers' caretaking authority, the question of suppression was unaffected by whether or not [petitioner] was arrested or by the legality of his arrest." *Id.* at 14a. Finally, the court held that the officers' subsequent use of a trained dog to sniff the outer perimeter of the vehicle was not a "search" and therefore did not implicate Fourth Amendment interests. *Id.* at 14a-17a.

2. Petitioner contends (Pet. 3-6) that the court of appeals erred in finding that the initial stop of his car was legal. He also contends (Pet. 6-9) that he was arrested without probable cause and that the cocaine that the officers discovered in the car was seized as a result of his illegal arrest. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature.[2]

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[2] Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General

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